

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 3172 OF 1998

Jayantilal Adult, residing at 301, Jasodha, Borivli Mumbai - 400 066. **Govindji** Occupation: Business Bhuvan Road, (East),
..Applicant

Vs.

1. State of Maharashtra
2. Sub Divisional Police Officer
Vasai
3. Sr. Inspector of Police
Manor Police Station ..Respondents

Mr. A.P. Mundargi with Mr. Rahul Kulkarni for applicant.
Dr. S.S. Tatkare, APP for respondents-State.

CORAM: B.H. MARLAPALLE, J.

Date : January 25, 2007.

ORAL JUDGMENT:

1. This application filed under Section 482 of Cr.P.C. prays for quashing of the proceedings in E.C.A. Special Case No.II-16/98 instituted before the learned Special Judge under the Essential Commodities Act 1955 at Thane.

2. The applicant is running a Petrol Pump by name

M/s. Mahalaxmi Petrol Pump of IBP Comapny and the same is located at Darvesh Village of Palghar Taluka. On 4/9/1998 Shri Ravindra Prabhakar Sangaonkar, Sub Divisional Police Officer, Vasai purportedly on receipt of some information is said to have raided the Petrol Pump in the early hours of 4/9/1998 along with Inspector of Police and other officers of the Manor Police Station. They had called two panchas at the said Petrol Pump and drawn allegedly panchanama (Exh.B) of the seizure of the fuel (diesel and petrol) which was taken by way of sample by the raiding party. Both the samples were drawn in the quantity of 750 ML. and were collected in a bottle. Consequently Shri V.S. Sanap, In-charge of the Police Station filed an FIR on the same day for offences punishable under Motor Spirit and High Speed Diesel (Prevention of Malpractices in Supply and Distribution) Order 1990 on the ground that the sample taken was adulterated.

3. In the reply filed by Shri Ravindra

Sengaonkar, Sub Divisional Police Officer at the relevant time, it has been stated that he along with police officers and two panchas visited Mahalaxmi

Petrol Pump on 3/9/98 at 23 hours and one tanker bearing registration No.MH-04-D-4347 was also present at the site. Samples were drawn from the said tanker at 0015 hours on 4/9/98. There was also another tanker whose number has not been given and samples were drawn from the same as well. It is further stated that samples were also drawn from the Petrol Pump and were sent to the Chemical Analyser. Seizure panchanama recorded had commenced at 6.30 a.m. and was completed at 7 a.m. on 4/9/1998.

4. The applicant prays for quashing of the Criminal Case on the following preliminary points:-

(a) The search and seizure was not done by the competent officer as has been set out in Clause VII of the order 1990.

(b) The tankers did not belong to the applicant and they were merely standing on the said petrol pump.

(c) Samples were drawn in breach of para 8 of the Order of 1990.

(d) In all three samples were required to be drawn and one sample so drawn was required to be handed over to the dealer so as to send the same within 10 days to any of the Laboratories mentioned in Schedule-II appended to the Order of 1990.

(e) The officer who carried the search and seizure failed to draw the sample of the fuel and to check whether the density of the product conforms to requirements indicated in Schedule-I and straight away a complaint was filed before the court below.

5. In the affidavit in reply filed by the SDPO support has been taken of the Petroleum Products (Supply and Distribution) Order of 1972 as well as Section 100 of the Cr.P.C. relating to search and seizure. It is not disputed that the affiant is not one of the officers listed in Clause/Para 7 of the Order of 1990. Under the said clause, the Government of Maharashtra has issued a Gazette Notification dated

25/10/1990 and authorised the following officers for
the purpose of Clause 7 of the Order of 1990:-

- (a) Collectors of Districts.
- (b) Additional Collectors of Districts.
- (c) The Controller of Rationing, Bombay.
- (d) Assistant Commissioner (Supply).
- (e) Deputy Controller of Rationing and
Assistant Controller of Rationing Bombay.
- (f) Deputy Collectors and Assistant Collectors
in the Districts.
- (g) District Supply Officer.
- (h) Tahsildars.
- (i) Supply Inspecting Officers.
- (j) Supply Inspectors, Rationing Inspectors
and weight and measures inspectors (legal
Metrology) of Civil Supplies Department.

. There is no dispute that Shri Ravindra
Sengaonkar, SDPO was not an officer from the revenue
department or of the cadre of any of the 10 officers
listed in the State Government Notification dated
25/10/1990 issued for the purpose of Clause/Para 7 of
the Order of 1990. The prosecution has been launched

under the said Order and, therefore, it is not permissible for the affiant to rely upon the Order of 1972 for search and seizure. This defect of undertaking the search and seizure by an unauthorised officer goes to the very foundation of the case and if the same has not been done by an authorised officer, the case must fall to the ground at the threshold itself.

6. In addition, samples were drawn in beer bottles which is not permissible. These bottles were not shown to the representative of the applicant so as to satisfy that they were clean glass containers. The officer while exercising powers of seizure did not record in writing the reasons for doing so and further a copy of such record, if any, was not made available to the dealer, transporter, consumer or any other concerned person. A third sample from the seizure made was not supplied to the applicant so as to be sent to the Laboratory of his choice and listed in Schedule-II appended to the Order of 1990 for analysis with a view to check whether the density of the product conforms to requirements indicated in Schedule-I.

Clauses 7 and 8 of the Order of 1990 read

thus:-

"7. Power of search and seizure :-

(1) Any Officer of the State Government, not below the rank of an Inspector, in the Department of Food and Civil Supply, duly authorised and notified in the official Gazette by such State Government, or any officer of an Oil Company not below the rank of sales officer may, with a view to securing compliance with the provisions of this Order, or for the purpose of satisfying himself that this order or an order made thereunder has been complied with.

(2) Enter and Search any place of premises being made use of or suspected to be made use of in the business of the dealer, transporter, consumer or any other person who is an employee or agent of such dealer/transporter/consumer with respect of to which there is reason to believe that the provisions of this order has been/are being or are about to be contravened.

(3) Stop and search any person or vehicle or receptacle used or intended to be used for the movement of the product.

(4) Inspect any book of accounts or other documents or any stock of the product used or suspected to be used in the business of the dealer, transporter, consumer or any other person suspected to be an employee or agent of the dealer, transporter or consumer.

(5) Take samples of the product and/or seize any of the stocks of the product which the officer has reason to believe has been or is being or is about to be used in contravention of this order and hereafter take or authorise the taking of all measures necessary for security the production of stocks/items so seized before the Collector having jurisdictions

under the provision of the Essential Commodities Act, 1955 (10 of 1955) and for their safe custody pending such production.

(6) While exercising the power of seizure provided under the sub-clause (A) the authorised officer shall record in writing the reasons for doing so, a copy of which shall be given to the dealer, transporter, consumer or any other concerned person.

(7) The provisions of Section 100 of the Code of Criminal Procedure 1972 (2 of 1974), relating to search and seizure shall, as far as may be apply to searches and seizure under this Order.

8. Sampling of Product :-

(1) The Officer authorised in Clause 7 shall draw the sample the tank, nozzle or vehicle or receptacle as the case may be to check whether density of the product conforms to the requirement indicated in Schedule-I.

(2) The Officer authorised in Clause 7 shall take sign and seal three samples of 750 ml. to 1 litre each of the product, one to be given to the dealer, transporter or concerned persons to preserve the sample in his safe custody till the testing/investigations are completed, the second sample to be kept by the concerned company or department and the third to be used for laboratory analysis.

(3) Samples shall be taken in clean glass or aluminium container (Plastic containers shall not be used for drawing samples).

(4) The samples label should be jointly signed by the Officer who has drawn the sample and the dealer or transporter or concerned person or his representative and the label shall contain information as regards the product, name of retail outlet, quantity of the sample, date, name of signature of the officer, name

and signature of the dealer or transporter or
concerned person or his representative.

(5) The authorised dealer shall send the third
sample of the product taken under sub-clause
(2) within 10 days to any of the laboratory
mentioned in Schedule II appended to this
Order for analysis with a view to checking
whether the density of the product conforms to
requirements indicated in Schedule-I."

7. While admitting this revision application,
proceedings in C.R.No.II-16/1998 were stayed. In any
case, the affidavit in reply filed does not meet
satisfactorily the challenge raised by the applicant
regarding the authority of the officer who carried out
the search and seizure operation as he was not one of
the competent officers notified by the State
Government and as noted earlier, a police officer is
not competent to carry out the search and seizure
operation within the meaning of Clause 7 of the Order
of 1990.

8. Hence, this application succeeds and the same
is hereby allowed. Rule is made absolute in terms of
prayer clause (a).

(B.H. Marlapalle,J.)